



COUNTY OF LOS ANGELES

FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294
(323) 881-2401

P. MICHAEL FREEMAN
FIRE CHIEF
FORESTER & FIRE WARDEN

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

April 21, 2009

43

APRIL 21, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**REQUEST FOR APPROVAL OF LIFEGUARD SERVICES AGREEMENT
BETWEEN THE COUNTY OF LOS ANGELES AND
THE CITY OF SANTA MONICA
(THIRD DISTRICT) (3 VOTES)**

SUBJECT

Approval of the Community Recreation Agreement for Lifeguard Services between the County of Los Angeles (County) and the City of Santa Monica (City) will allow the County, through the Consolidated Fire Protection District (Fire District), to continue to provide lifeguard services within the City.

IT IS RECOMMENDED THAT YOUR BOARD:

1. **Acting as the Board of Supervisors**, approve and instruct the Chairman of the Board to sign the attached Community Recreation Agreement for Lifeguard Services between the County of Los Angeles and the City of Santa Monica effective upon Board approval for a period of 10 years, with one optional 5-year extension.
2. **Acting as the Board of Supervisors**, find that this Agreement is exempt from the California Environmental Quality Act.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS
ARTESIA
AZUSA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
BRADBURY

CALABASAS
CARSON
CERRITOS
CLAREMONT
COMMERCE
COVINA
CUDAHY

DIAMOND BAR
DUARTE
EL MONTE
GARDENA
GLENDALE
HAWAIIAN GARDENS
HAWTHORNE

HIDDEN HILLS
HUNTINGTON PARK
INDUSTRY
INGLEWOOD
IRWINDALE
LA CANADA FLINTRIDGE
LA HABRA

LA MIRADA
LA PUENTE
LAKEWOOD
LANCASTER
LAWDALE
LOMITA
LYNWOOD

MALIBU
MAYWOOD
NORWALK
PALMDALE
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA

POMONA
RANCHO PALOS VERDES
ROLLING HILLS
ROLLING HILLS ESTATES
ROSEMEAD
SAN DIMAS
SANTA CLARITA

SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
TEMPLE CITY
WALNUT
WEST HOLLYWOOD
WESTLAKE VILLAGE
WHITTIER

3. **Acting as the governing body of the Consolidated Fire Protection District,** authorize the Fire Chief to continue to provide lifeguard services to the City of Santa Monica pursuant to the Agreement between the County and the Fire District dated May 24, 1994.
4. **Acting as the governing body of the Consolidated Fire Protection District,** authorize the Fire Chief to execute all documents necessary for City reimbursement of any approved improvements or repairs to the City's lifeguard headquarters facility from the \$485,000 the City has set aside in a Major Repairs Reserve Fund.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The existing Lifeguard Services Agreement for the City was approved by your Board on November 12, 2002 (No. 74207). The initial term of that Agreement ended December 31, 2006, and has since been effective on a month-to-month basis to allow for negotiations of a new Agreement. As a result of those negotiations, the attached proposed 10-year Agreement continues the provision of lifeguard services to the City, while increasing the City's payments for those services as described below.

Implementation of Strategic Plan Goals

Approval of the recommended actions is consistent with the County's Strategic Goal No. 5, "Public Safety," of the County Strategic Plan which guides us to "Ensure that the committed efforts of the public safety partners continue to maintain and improve the safety and security of the people of Los Angeles County."

FISCAL IMPACT/FINANCING

For Fiscal Year 2008-09, the City's payment will increase from \$1,672,733 to a negotiated set amount of \$1,726,338 (which will be prorated based upon the date of Board approval). This new Agreement will incrementally increase the City's payment by \$100,000 annually so that the City will be paying the full cost of lifeguard services by 2015-16. The current Agreement was tied to State Lifeguard salary and employee benefits (S&EB) rates. The State S&EB rates are less than Los Angeles County S&EB rates.

The City's payment will also be annually adjusted by the percentage change in the Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County area.

The City has also set aside \$485,000 in a Major Repairs Reserve Fund for mutually agreeable projects that improve, repair, or expand the Santa Monica Lifeguard headquarters facility.

The County and Fire District allocate costs and revenues for lifeguard services based upon a 70% Net County Cost and 30% Fire District share. Therefore, both the County General Fund and the Fire District will benefit by the increased revenues that will be derived from this new Agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The proposed Agreement will be effective upon Board approval for a 10-year period. Thereafter, upon mutual consent between City and County, the proposed Agreement may be extended for one additional five-year period on the same terms and conditions. This Agreement replaces prior Agreement No. 74207. County Counsel has approved this Agreement as to form. The Santa Monica City Council approved this Agreement on March 23, 2009.

The County has a separate agreement with the Fire District, dated May 24, 1994 (No. 67476), through which the County contracts with the Fire District for the provision of lifeguard services to areas of the County outside of the Fire District's jurisdictional boundaries, which includes the City of Santa Monica.

IMPACT ON CURRENT SERVICES OR PROJECTS

The proposed Agreement allows the continued provision of lifeguard services to the City. No adverse impact on current services will occur.

ENVIRONMENTAL DOCUMENTATION

This Agreement is exempt from the CEQA pursuant to Section 15061 (b)(3) of the CEQA Guidelines because it can be seen with certainty that this activity will not have a significant effect on the environment. A Notice of Exemption is attached.

Honorable Board of Supervisors
April 21, 2009
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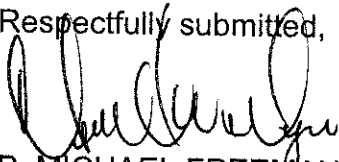
CONCLUSION

Upon approval by your Board, please instruct the Executive Officer to return the following to the Fire District:

- Two (2) copies of the Minute Order and/or this approved letter, as applicable.
- Two (2) executed original Agreements and two (2) copies of the Agreement.

The Fire District will return two original Agreements to the City per the City's request.

Respectfully submitted,



P. MICHAEL FREEMAN

for
PMF:lc

Attachments

c: Executive Officer, Board of Supervisors
Chief Executive Officer
County Counsel

Notice of Exemption

Appendix E

To: ☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: (Public Agency) Consolidated Fire Protection District
1320 N. Eastern Ave.

☒ County Clerk
County of Los Angeles

(Address)
Los Angeles, CA 90063

Community Services Agreement for Lifeguard Services between the County of Los Angeles
Project Title: (through the Consolidated Fire Protection District) and the City of Santa Monica (City).

Project Location - Specific: Santa Monica Beach

Project Location - City: Santa Monica

Project Location - County: Los Angeles

Description of Nature, Purpose, and Beneficiaries of Project:

This Agreement will allow the County, through the Consolidated Fire Protection District to continue to provide lifeguard services within the City for a period of 10 years, with one optional 5-year extension.

Name of Public Agency Approving Project: Los Angeles County Board of Supervisors

Name of Person or Agency Carrying Out Project: Consolidated Fire Protection District of Los Angeles County

Exempt Status: (check one)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number:
- ☐ Statutory Exemptions. State code number:

Reasons why project is exempt: Pursuant to Section 15061(b)(3), this project is not subject to CEQA as it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

Lead Agency

Contact Person: Debbie Aguirre

Area Code/Telephone/Extension: 323 - 881-2404

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Frank Vidler Date: 3-31-07 Title: Chief, Forestry Division

☐ Signed by Lead Agency

Date received for filing at OPR:

☒ Signed by Applicant

Revised October 1989

1 COMMUNITY RECREATION AGREEMENT
2 FOR LIFEGUARD SERVICES
3 BETWEEN THE COUNTY OF LOS ANGELES AND
4 THE CITY OF SANTA MONICA
5

6 WITNESSETH

7 THIS COMMUNITY RECREATION AGREEMENT FOR LIFEGUARD SERVICES
8 ("Agreement") is made and entered into by and between the City of Santa Monica, hereinafter
9 referred to as "CITY," and the COUNTY OF LOS ANGELES, hereinafter referred to as
10 "COUNTY."

11 WHEREAS, the State of California is the owner of beach property along the waterfront
12 of the CITY, known as Santa Monica State Beach (hereinafter referred to as the "BEACH");

13 WHEREAS, the CITY has an Operating Agreement with the State of California
14 (No. 8146 CCS) for the operation of the BEACH;

15 WHEREAS, the CITY and the COUNTY have a Community Recreation Agreement
16 entitled "Community Recreation Agreement for Lifeguard Services between the County of
17 Los Angeles and the City of Santa Monica" dated November 12, 2002 (hereinafter referred to
18 as the "Prior Agreement");

19 WHEREAS, the CITY and the COUNTY are desirous of entering into a new agreement
20 whereby the COUNTY will continue to provide lifeguard services on the BEACH under the
21 terms and conditions set forth herein and for this Agreement to replace and to supersede the
22 Prior Agreement;

23 WHEREAS, such lifeguard services will promote and preserve the health and general
24 welfare of the public;

25 WHEREAS, the COUNTY requires financial assistance from CITY to continue to
26 provide lifeguard services on the BEACH; and

27 WHEREAS, this Agreement is authorized pursuant to Chapter 10, Part 7 of Division 1,
28 commencing with Section 10900, of the California Education Code.

No 76974

1 NOW, THEREFORE, in consideration of these mutual covenants, the parties hereto
2 agree as follows:

3 **SECTION 1. TERM**

4 1.01 The term of this Agreement shall be for a period of ten (10) years beginning on the
5 date this Agreement is last executed by both parties ("Initial Term"), unless extended or
6 terminated in accordance with this Agreement.

7 1.02 In the event either party elects to terminate this Agreement, the parties agree that
8 in the interest of public safety, termination of this Agreement shall not occur during the months
9 of June, July, August or September ("Summer Months"). During the Initial Term or any
10 extension thereof, either party may terminate this Agreement, for any reason, by giving at least
11 two years' advance written notice to the other party of its intention to terminate this Agreement.

12 1.03 Subject to mutual consent in writing between the CITY and the COUNTY, this
13 Agreement may be extended for one additional five-year period on the same terms and
14 conditions specified in this Agreement ("Extension Option"). The CITY shall inform the
15 COUNTY in writing at least one year prior to the end of the Initial Term of this Agreement of
16 the CITY's intention to either (1) request an extension of this Agreement or (2) allow expiration
17 of this Agreement. If an extension is requested, the COUNTY shall respond to the CITY in
18 writing to advise whether the COUNTY consents to such extension within sixty (60) days of
19 receiving the request. Both parties must agree to the Extension Option for the extension of the
20 Initial Term to be binding. In the event the Extension Option is not so duly exercised, such
21 Extension Option shall automatically expire and shall be of no further force or effect.

22 1.04 Notwithstanding the expiration of the Term of this Agreement, this Agreement
23 shall continue on a month-to-month basis until a new agreement is in place should both parties
24 mutually agree in writing to negotiate an agreement for the continued provision of COUNTY
25 lifeguard services. Following the expiration of the Term of this Agreement, in the event the
26 parties are unable to agree upon mutually acceptable terms of a new agreement, either party
27 may terminate this Agreement upon one year's prior written notice of termination subject to the
28 restriction that termination of this Agreement shall not occur during the Summer Months.

1 1.05 CITY and COUNTY agree that in the event that the CITY's jurisdictional or
2 operational authority of the BEACH is either reduced or increased, both parties will in good
3 faith promptly renegotiate the financial obligations of the CITY to the COUNTY in this
4 Agreement.

5
6 **SECTION 2. OBLIGATIONS OF THE COUNTY**

7 2.01 The COUNTY agrees to perform lifeguard services on the BEACH. Such services
8 are described in Exhibit A, attached hereto and included herein by this reference. The
9 COUNTY shall meet with the CITY, as appropriate, to review ongoing costs and service-level
10 requirements. Staffing levels and patterns shall be established and adjusted by the COUNTY
11 in accordance with Exhibit A.

12 2.02 The COUNTY, at its own expense, shall be responsible for the maintenance,
13 repair and replacement of lifeguard towers.

14 2.03 The COUNTY shall perform, at its own expense and subject to Section 4.01B
15 below, day-to-day maintenance and all routine and minor repairs (collectively referred to as
16 "Routine Repairs") of the Lifeguard Headquarters located at 1642 Ocean Front Walk so long
17 as the COUNTY occupies that facility in conjunction with lifeguard operations. Routine
18 Repairs shall be limited to projects that do not exceed \$100,000 in costs, including but not
19 limited to the following: repair or replacement of doors and floor coverings; incidental plumbing
20 and electrical repairs; heating and air conditioning repairs; exhaust fan replacement; and
21 placement of additional cabinets for offices and/or lockers. The CITY has no obligation to
22 make Routine Repairs. Any project that exceeds \$100,000 in cost, including but not limited to
23 repairs to the foundation and major structural integrity, roof replacement, and extensive repairs
24 due to catastrophic events such as flooding, fire or earthquakes, or improvements or
25 expansions to the facility, shall be deemed a "Major Repair"; and the COUNTY has no
26 obligation to make Major Repairs except for the expenditure of those funds set aside in the
27 Major Repairs Reserve Fund as defined below.

1 2.04 The COUNTY shall make its best effort to provide the CITY with a written annual
2 report of Routine Repairs and Major Repairs within 90 days of the conclusion of each fiscal
3 year, upon request from CITY. The CITY acknowledges that COUNTY does not track costs
4 associated with repairs performed by COUNTY personnel.
5

6 **SECTION 3. OBLIGATIONS OF THE CITY**

7 3.01 In consideration of the lifeguard services provided pursuant to this Agreement, the
8 CITY shall provide COUNTY with the use of Lifeguard Headquarters during the Term and shall
9 provide free permit parking for any and all COUNTY employees performing services under this
10 Agreement. The Lifeguard Headquarters has been inspected by COUNTY and COUNTY
11 accepts such premises "AS IS," subject to all applicable zoning, municipal, county and state
12 laws, ordinances and regulations governing and regulating the use of the premises, and any
13 covenant or restrictions of record. The CITY shall not be obligated to make any alterations,
14 additions, or betterments to such premises. In the event of any incident that renders the
15 Lifeguard Headquarters uninhabitable, both the COUNTY and the CITY shall work in good
16 faith to relocate the Lifeguard Headquarters operations to ensure continuance of all services
17 pursuant to this Agreement.

18 3.02 Pursuant to the Prior Agreement, the CITY has set aside and shall make
19 available previously accumulated funds in the amount of \$485,000 for the purpose of
20 improving, repairing, and expanding the Lifeguard Headquarters located at 1642 Ocean Front
21 Walk ("Major Repairs Reserve Fund"). The COUNTY shall submit in writing a request to the
22 CITY for the COUNTY to utilize the Major Repairs Reserve Fund and the CITY's approval of
23 such request shall not be unreasonably withheld.

24 3.03 After the expenditure of the funds available in the Major Repairs Reserve Fund,
25 the CITY agrees to provide its best effort to identify and to secure any additional funding
26 required for necessary Major Repairs in cooperation with COUNTY. However, the CITY shall
27 have no obligation to provide any additional funds beyond the amount contained in the Major
28 Repairs Reserve Fund for Major Repairs or for Minor Repairs or the Overhead Charge as

1 described in Section 4.01B below and any additional funds, if any, will be at the CITY's sole
2 and complete discretion and subject to budgetary approval by the Santa Monica City Council.

3 3.04 The COUNTY's plans for any Major Repairs, including the expenditure of funds
4 from the Major Repairs Reserve Fund, shall be submitted in writing to the CITY and presented
5 to the CITY for approval prior to implementation. COUNTY's submittal shall include an
6 itemized list of needed repairs and cost proposal. CITY and COUNTY shall mutually agree
7 upon a construction timeline to ensure continuance of all services pursuant to this Agreement.
8 The COUNTY shall not be liable for any damages caused by any delay in making Major
9 Repairs to the Lifeguard Headquarters. Prior to the commencement of any Major Repairs, the
10 COUNTY shall be obligated to provide the CITY with evidence that its contractor complies with
11 the improvement and insurance requirements set forth in Exhibit B, and that the CITY is listed
12 as an additional insured to the same extent as the COUNTY in the insurance policies of its
13 contractors. CITY shall make payment to the COUNTY for any CITY-authorized Major
14 Repairs within 30 days of the COUNTY's invoice date.

15 3.05 The CITY, at its own expense, shall provide all BEACH maintenance, BEACH
16 cleaning, and animal control services on the BEACH.

17 3.06 The CITY will utilize its best efforts to notify the COUNTY of any major property
18 development proposals that could impact lifeguard services on the BEACH. The CITY and the
19 COUNTY shall cooperate in their efforts to ensure the developer mitigates any additional costs
20 arising from such development.

21 3.07 The CITY shall provide to the COUNTY sufficient space in the Harbor Patrol office
22 or other adjacent locations at the end of the Santa Monica Pier, for the installation of COUNTY
23 radio equipment for communications and coastal monitoring at no expense to the CITY. Only
24 equipment necessary to maintain lifeguard communications will be placed in service at such
25 location and shall be installed only after receiving written approval of the installation design
26 plans from the CITY.

1 **SECTION 4. FINANCIAL CONSIDERATIONS**

2 4.01 In exchange for the services provided hereunder, the CITY agrees to pay, and the
3 COUNTY agrees to accept, the following amounts: (i) Base Payment, subject to annual CPI
4 increases as set forth in Section 4.01(A); (ii) Overhead Charges as set forth in Section 4.01(B);
5 and (iii) Catch-up Payments as set forth in Section 4.01(C).

6 A. The term "Base Payment" shall mean and refer to the amount of COUNTY direct
7 costs for lifeguard personnel providing lifeguard services to the CITY pursuant to Exhibit
8 A of this Agreement. During FY 2008-09, the Base Payment shall be \$1,576,564. The
9 City shall pay the Base Payment for each Year during the Term as set forth in the
10 Calculation of City's Annual Financial Obligation attached hereto and incorporated
11 herein by this reference as Exhibit C. The Base Payment shall be adjusted each year
12 by adjusting the preceding year's Base Payment amount by the percentage change in
13 the Consumer Price Index for the "Urban Wage Earners and Clerical Workers, Los
14 Angeles-Riverside-Orange County" area for the 12-month period ending in December
15 for the preceding calendar year ("CPI"). The resulting Base Payment for each
16 consecutive fiscal year will be calculated by applying this CPI adjustment to the prior
17 fiscal year Base Payment plus the prior fiscal year Catch-Up Payment (see Section
18 4.01(C))

19 B. The term "Overhead Charge" shall mean and refer to indirect costs of COUNTY
20 for providing lifeguard services to the CITY as set forth in Exhibit A of this Agreement.
21 The Overhead Charge consists of certain charges for the COUNTY's lifeguard division
22 administration, training, supplies, and labor and materials associated with Routine
23 Repairs, as set forth in the Calculation of City's Annual Financial Obligation attached as
24 Exhibit C. The parties agree that the Overhead Charge is calculated on a percentage
25 ("Overhead Rate") of the Base Payment. The Overhead Charge for FY 2008-09 shall
26 be based upon an Overhead Rate of 9.5% of the Base Payment and the Overhead
27 Charge for FY 2009-10 shall be based upon an Overhead Rate of 19% of the Base
28 Payment. Starting in FY 2010-11 and annually thereafter, the Overhead Rate used to

1 calculate the Overhead Charge will be determined by COUNTY based on an overhead
2 allocation plan that complies with the COUNTY Auditor-Controller's generally accepted
3 accounting principles. Upon request by the CITY, COUNTY shall provide a detailed
4 written explanation of the means used to calculate the Overhead Rate.

5 Should the Overhead Rate increase by 20% or more over the previous year's
6 Overhead Rate or if the COUNTY alters the formula used to determine the Overhead
7 Rate, both parties agree to meet and confer to discuss the proposed increase. If the
8 increase is, in whole or part, attributable to the increased cost of Routine Repairs, both
9 parties agree to discuss means to eliminate or, at a minimum, significantly limit the
10 increases associated with Routine Repairs. If a resolution cannot be reached by the
11 parties, the CITY will pay the COUNTY the undisputed portion of the Overhead Charge
12 consisting of the previous year's Overhead Charge, but the disputed portion will be
13 subject to dispute resolution by the parties and either party may exercise its termination
14 rights set forth in this Agreement. If the Overhead Rate increases by 20% or more but
15 is not attributable to increased Routine Repairs, the CITY may elect to pay said
16 increase over a period of three (3) years from the date of invoice.

17 C. The term "Catch-Up Payment" shall mean and refer to an amount of \$700,000
18 and represents the amount accepted by the COUNTY as sufficient to bring CITY's
19 payments current. The Catch-Up Payment shall be made incrementally in seven annual
20 installments of \$100,000, commencing in FY 2009-10 as shown in Exhibit C.

21 D. For invoicing purposes, the amount owed the COUNTY for FY 2008-09 shall be
22 prorated by dividing the total due for FY 2008-09 as stated in the above calculation by
23 365 days, and multiplying by the number of days remaining through June 30, 2009.
24 Likewise, the amount owed pursuant to the Prior Agreement shall be prorated by
25 dividing the amount owed for FY 2008-09 as stated in the Prior Agreement by 365 days,
26 and multiplying by the number of days from July 1, 2008 through the effective date of
27 this Agreement.

1 4.02 The COUNTY shall prepare quarterly invoices during the term of this Agreement
2 showing the CITY's annual financial obligation to the COUNTY pursuant to Paragraphs 4.01(A)
3 through 4.01(C) and Exhibit C herein, divided into four equal payments. The invoices shall be
4 provided to the CITY on or before each September 30, December 31, March 31, and June 30.
5 For example, for services provided by the COUNTY to the CITY for the fiscal year July 1, 2008
6 to June 30, 2009, the COUNTY shall bill the CITY by September 30, 2008, December 31,
7 2008, March 31, 2009, and June 30, 2009. The CITY shall pay the invoices no later than
8 October 31, January 31, April 30 and July 31, respectively. This payment schedule may be
9 changed upon the mutual written consent of both the City Manager of the CITY and the Fire
10 Chief of the COUNTY's Fire Department.

11 4.03 The CITY shall make quarterly payments to the COUNTY as invoiced by the
12 COUNTY to fulfill the CITY's annual financial obligations pursuant to Paragraphs 4.01(A)
13 through 4.01(D) herein.

14 4.04 Each CITY quarterly payment shall be in the form of a check, payable to
15 COUNTY, mailed or otherwise delivered to the Los Angeles County Fire Department, Post
16 Office Box 54740, Los Angeles, CA 90054-0740, or as otherwise directed in writing by the Fire
17 Chief of the COUNTY's Fire Department or his designee.

18 4.05 The COUNTY shall provide the CITY with a written annual accounting of the total
19 expenditures in substantially the same format as Exhibit D, Annual Staffing Costs of Santa
20 Monica Beach, and Exhibit E, Indirect Expense Rate, attached hereto and included herein by
21 these references, within ninety (90) days after conclusion of each year.

22 COUNTY shall maintain complete and accurate records with respect to all costs,
23 expenses, receipts and other such information included within the division administration
24 overhead as part of the Overhead Charge, as well as Base Payment, Routine Repairs and
25 Major Repairs. COUNTY shall maintain records of service provided in sufficient detail to
26 permit an audit by the CITY. All records shall be maintained in accordance with the County
27 guidelines, procedures, and requirements. Representatives of CITY or its designees shall be
28 allowed access to COUNTY's books and records, and shall have the right to examine, audit

1 and make transcripts there from as necessary, and to inspect all work, data, documents,
2 proceedings and activities related to this Agreement within ten (10) days upon written request
3 by the CITY for a period of three (3) years after receipt of final payment.
4

5 **SECTION 5. PUBLIC IMPROVEMENTS**

6 5.01 The CITY shall provide the COUNTY with thirty (30) days' written notice prior to
7 any work of public improvement performed on the BEACH by the CITY, its agents, employees,
8 or contractors.

9 5.02 The COUNTY shall not undertake any physical construction, alteration, or other
10 work of public improvement on the BEACH, including the Lifeguard Headquarters, without the
11 prior written consent of the CITY, except that COUNTY may make Routine Repairs to the
12 interior of the Lifeguard Headquarters without prior authorization.

13 5.03 The CITY hereby grants the COUNTY ingress and egress rights for heavy
14 equipment to move lifeguard towers and breach storm drains as determined by COUNTY's
15 Department of Public Works.
16

17 **SECTION 6. SPECIAL EVENTS AND FILM PERMITS**

18 The CITY agrees to exercise its best efforts to provide the ranking lifeguard reasonable
19 advance written notice of any permit the CITY may issue for filming or other special events to
20 be conducted by third parties on the BEACH that may impact lifeguard activities.
21

22 **SECTION 7. COUNTY MARKETING PROGRAM AND TRAINING**

23 7.01 The CITY authorizes the COUNTY to continue to display marketing program
24 sponsor or donor names, or their product names, on COUNTY tideboards, trucks, uniforms,
25 rescue boats, lifeguard towers, rip current signs, and other lifeguard equipment or any other
26 equipment or vehicle that is provided by the COUNTY pursuant to Exhibit A of this Agreement.
27 Name/product identification shall be displayed only on equipment that is involved in providing a
28 public service. Name/product identification shall not be used to directly solicit the sale of any

1 product. The COUNTY shall not permit name/product identification displays involving alcoholic
2 beverage or tobacco related products. The COUNTY shall not display the name of any
3 marketing program sponsor or donor, or the name of their products, on the BEACH in any
4 fashion, other than as is described in this paragraph, without prior written approval from the
5 CITY.

6 7.02 The CITY agrees to allow the COUNTY to hold an annual swim training event
7 ("TRAINING EVENT") on the BEACH subject to this Section 7.02. The CITY waives the
8 application processing fee and any associated parking fees for this TRAINING EVENT. The
9 COUNTY is required to submit a complete event application to the CITY at least ninety (90)
10 days prior to the TRAINING EVENT and to coordinate the dates of the event with the CITY to
11 prevent conflicts with other special events, including the Coastal Clean-Up Day.

12 13 **SECTION 8. ASSIGNMENT**

14 The COUNTY may assign, delegate, or transfer this Agreement, either in whole or in
15 part, at its sole discretion and without the consent of the CITY, to the Consolidated Fire
16 Protection District of Los Angeles County. The COUNTY also may assign, delegate, or
17 transfer, either in whole or in part, this Agreement to any other public agency with the prior
18 written consent of the CITY. In the event of assignment, the assignee of the COUNTY shall
19 have all rights and assume all the obligations of the COUNTY under this Agreement.

20 21 **SECTION 9. NOTICES**

22 All written notices pursuant to this Agreement shall be addressed as set forth below and
23 shall be personally delivered or sent through the United States mail, postage prepaid and
24 addressed to such persons and addresses as the parties may designate over the Term of this
25 Agreement. Such notices shall be addressed as follows:

26 To the CITY: Director
27 Community and Cultural Services Department
28 City of Santa Monica

1 1685 Main Street
2 Santa Monica, CA 90401
3 With a copy to: City Attorney of the City of Santa Monica
4 1685 Main Street, Third Floor
5 Santa Monica, CA 90401
6 To the COUNTY: Fire Chief
7 Los Angeles County Fire Department
8 1320 North Eastern Avenue
9 Los Angeles, CA 90063
10 With a copy to: Chief, Lifeguard Division
11 Los Angeles County Fire Department
12 1320 North Eastern Avenue
13 Los Angeles, CA 90063
14

15 **SECTION 10. INDEMNIFICATION**

16 Neither party shall be liable for the negligent or wrongful acts of the other in the
17 performance of this Agreement. CITY agrees to indemnify, defend, and hold harmless the
18 COUNTY, its agents, officers, and employees from any and all claims, demands, liabilities, and
19 expenses, including reasonable attorney's fees, arising from the negligent or wrongful acts of
20 CITY in the performance of this Agreement. COUNTY agrees to indemnify, defend, and hold
21 harmless the CITY, its agents, officers, and employees from any and all claims, demands,
22 liabilities, and expenses, including reasonable attorney's fees, arising from the negligent or
23 wrongful acts of COUNTY in the performance of this Agreement.
24

25 **SECTION 11. SEVERABILITY**

26 In the event that any provision herein contained is held to be invalid, void, or illegal by
27 any court of competent jurisdiction, the same shall be deemed severable from the remainder of
28 this Agreement and shall in no way affect, impair or invalidate any other provision contained

1 herein. If any such provision shall be deemed invalid due to its scope or breadth, such
2 provision shall be deemed valid to the extent of the scope or breadth permitted by law.
3

4 **SECTION 12. WAIVER**

5 No breach of any provision hereof can be waived unless in writing. Waiver of any one
6 breach of any provision shall not be deemed to be a waiver of any breach of the same or any
7 other provision hereof.
8

9 **SECTION 13. ENTIRE AGREEMENT**

10 This Agreement constitutes the entire agreement between the COUNTY and the CITY
11 for services to be performed, and may be modified only by further written agreement between
12 the parties hereto. The non-enforceability, invalidity, or illegality of any provision of this
13 Agreement shall not render the other provisions thereof unenforceable, invalid, or illegal.
14

15 **SECTION 14. DEFAULT**

16 Any failure by a party to this Agreement to observe or perform a provision of this
17 Agreement, where such failure continues for sixty (60) days after written notice of such failure,
18 shall constitute a default and breach of this Agreement. However, if the nature of the default is
19 such that it cannot be reasonably cured within the sixty (60) day period, the defaulting party
20 shall not be deemed to be in default if an effective cure is commenced within the sixty (60) day
21 period and thereafter diligently prosecuted to completion. Upon an event of default, the non-
22 defaulting party shall have the right to terminate this Agreement upon ninety (90) days notice,
23 provided that the termination date is subject to the stipulation regarding Summer Months in
24 Section 1.02 and transition occurs in such a manner that it does not impair or disrupt public
25 safety.

26 ///

27 ///

28 ///

1 IN WITNESS WHEREOF, the City of Santa Monica, by action of its City Council, has
2 caused this Agreement to be duly executed, and the County of Los Angeles, by order of its
3 Board of Supervisors, has caused this Agreement to be executed on its behalf by the Chair of
4 said Board and attested by the Clerk thereof on the day and year hereinbelow.

COUNTY OF LOS ANGELES

By: *Don Krabe*

Chair, Board of Supervisors

Date: APR 21 2009

ATTEST:

By: *Sachi A. Hamai*

SACHI A. HAMAI Deputy
Executive Officer-Clerk of
the Board of Supervisors

I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: *Scott Kuhn*

SCOTT KUHN, Senior Deputy



By: *Sachi A. Hamai*

Deputy

CITY OF SANTA MONICA
a municipal corporation

By: *P. Lamont Ewell*

P. LAMONT EWELL
City Manager

Date: 3.30.09

ATTEST:

By: *Maria Stewart*

MARIA STEWART
City Clerk

APPROVED AS TO FORM:

By: *Marsha Jones Moutrie*

MARSHA JONES MOUTRIE
City Attorney

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

43 APR 21 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

EXHIBIT A
LIFEGUARD SERVICES

The COUNTY shall provide lifeguard services on the BEACH within the jurisdiction of the CITY. These services shall include but not be limited to daily lifeguard coverage, seasonal and intermittent tower lifeguard coverage, supervision and management of the lifeguard services as required for the time of year and BEACH conditions, 24-hour dispatch and response capability, and rescue boat response. COUNTY shall provide all tools and equipment necessary to complete the obligations hereunder including vehicles, boats, towers, communications equipment, and rescue equipment. COUNTY shall provide other resources as may be available on an as-needed basis to meet specific emergency requirements as determined by COUNTY in its sole discretion.

EXHIBIT B – IMPROVEMENT AND INSURANCE REQUIREMENTS

I. IMPROVEMENTS. In the event the COUNTY undertakes any improvements for Major Repairs to the Lifeguard Headquarters pursuant to the provisions of this Agreement, the following provisions shall apply:

A. Manner of Construction. COUNTY shall retain a general contractor (the "Contractor"), acceptable to the CITY, for the construction of approved improvements. The CITY shall not unreasonably withhold consent of the COUNTY's proposed Contractor. The Contractor shall have the following qualifications: (i) an applicable license from the State of California; (ii) at least five years of experience; (iii) completion of at least one comparable project for a similar size and scope; (iv) ability to provide requisite insurance and bonding requirements. COUNTY shall be solely responsible for monitoring the progress of the improvements and supervision thereof. Prior to the commencement of any construction for the improvements and during the course of construction, COUNTY shall obtain and maintain or require the Contractor to obtain and maintain Commercial Liability, Business Automobile, and Workers' Compensation Insurance adequate to fully protect CITY as well as COUNTY from and against any and all liability for death of or injury to person or damage to property caused in or about or by reason of the construction of the improvements. At the sole option of the COUNTY, all or any portion of the insurance the Contractor it is required to provide may be provided under the COUNTY's self-insurance program. The City will maintain course of construction insurance for 100% of all improvements on an all risk basis.

B. Manner of Work. In connection with the improvements, COUNTY shall use commercially reasonable efforts to ensure that: (i) COUNTY's activities are conducted in such a manner so as to not unreasonably interfere with the activities of the area; (ii) COUNTY has obtained or will obtain all CITY approvals required under this Agreement and/or any applicable governmental approvals, consents and permits, and (iii) COUNTY promptly removes from the Premises in

1 its entirety all trash, construction debris and other waste that may accumulate in
2 connection with such activities.

3 C. Mechanics' Liens. No work performed by COUNTY pursuant to this Agreement,
4 whether in the nature of erection, construction, alteration, repair or improvement
5 of any kind, shall be deemed to be for the immediate use and benefit of CITY so
6 that no mechanic's or other lien shall be allowed against the estate of CITY by
7 reason of any consent given by CITY to COUNTY to improve the Premises.
8 COUNTY shall give CITY adequate prior written notice of its intent to commence
9 any construction for which a mechanic's lien could result so that CITY may timely
10 post a notice of non-responsibility. COUNTY shall pay promptly all persons
11 furnishing labor or materials with respect to any work performed by COUNTY or
12 its contractors on or about the Premises. In the event any mechanic's or other
13 lien at any time is filed against the Premises or CITY's property by reason of
14 work, labor, services or materials performed or furnished, or alleged to have
15 been performed or furnished to COUNTY or to anyone holding the Premises
16 through or under COUNTY, COUNTY shall forthwith cause the lien to be
17 discharged of record or bonded to the satisfaction of CITY. If COUNTY fails to
18 cause such lien to be so discharged or bonded after being notified of the filing
19 thereof, then, in addition to any other right or remedy of CITY, CITY may bond or
20 discharge the same by paying the amount claimed to be due, and the amount so
21 paid by CITY, together with interest thereon at the Default Rate, shall be due and
22 payable by COUNTY to CITY.

23 D. Compliance with Law. All improvements shall be in compliance with all
24 applicable law. COUNTY also acknowledges that the improvements shall be
25 satisfactory to, approved by, and in compliance with all requirements of all
26 various governmental entities that may have jurisdiction over the Premises and
27 its improvements in addition to the CITY, which may include, but are not limited
28 to, the City Landmark's Commission, the City Architectural Review Board, the
29 City Planning Commission, the City Council, California State Parks and the State
30 Coastal Commission. In the event such improvements do not comply with any of

1 the aforementioned requirements, COUNTY shall promptly commence to bring
2 such improvements into compliance therewith.

3
4 II. INSURANCE.

5 Prior to commencing work, the Contractor shall procure and maintain at Contractor's
6 own cost and expense for the duration of the contract insurance against claims for injuries to
7 persons or damages to property that may arise from or in connection with the performance of
8 the work or services hereunder by the Contractor, its agents, representatives, employees, or
9 subcontractors. The cost of such insurance shall be included in Contractor's bid.

10 Without in any way affecting the indemnity provided, the Contractor shall secure before
11 commencement of the work and throughout the contract the following types and amounts of
12 insurance:

13 A. Minimum Limits of Insurance: Contractor shall obtain insurance of the types and
14 in the amounts described below:

15 1. Commercial General Liability Insurance: Contractor shall maintain
16 commercial general liability (CGL) with a limit as required by the
17 COUNTY, but not less than \$1,000,000 each occurrence/\$2,000,000
18 general aggregate.

19 2. Business Auto Liability Insurance: Contractor shall maintain business auto
20 liability with a limit as required by the COUNTY but not less than
21 \$1,000,000 each accident.

22 3. Workers' Compensation and Employer's Liability Insurance: Contractor
23 shall maintain workers' compensation insurance as required by the State
24 of California and Employer's Liability Insurance in the amount of
25 \$1,000,000 per accident for bodily injury or disease.

26 B. Minimum Scope of Insurance

27 1. CGL insurance shall be written on Insurance Services Office form CG 00

1 01 (or a substitute form providing equivalent coverage) and shall cover
2 liability arising from Premises, operations, independent contractors,
3 products-completed operations, personal injury and advertising injury
4 liability assumed under an insured contract (including the tort liability of
5 another assumed in a business contract), and explosion, collapse and
6 underground hazards.

7 2. Business Auto Insurance shall cover liability arising out of any auto
8 (including owned, hired, and non-owned autos). Coverage shall be written
9 on Insurance Services Office form CA 00 01 or a substitute form providing
10 equivalent liability coverage.

11 C. Deductibles and Self-Insured Retentions: Any deductibles or self -insured
12 retentions must be declared to the COUNTY. At the option of the COUNTY
13 either the insurer shall reduce or eliminate such deductibles or self-insured
14 retentions; or the Contractor shall provide a financial guarantee satisfactory to
15 the COUNTY guaranteeing payment of losses and related investigation, claim
16 administration and defense expenses.

17 D. Other Insurance Provisions: The general liability and automobile liability policies
18 are to contain, or be endorsed to contain the following provisions:

19 1. The CITY, its officers, officials, employees, and volunteers are to be
20 covered as additional insureds with respect to liability arising out of
21 automobiles owned, leased, hired, or borrowed by or on behalf of the
22 Contractor; and with respect to liability arising out of work or operations
23 performed by or on behalf of the Contractor including materials, parts or
24 equipment furnished in connection with such work or operations. Under
25 the CGL policy, using the Insurance Services Office additional insured
26 endorsement form CG 20 10 or a substitute providing equivalent
27 coverage, and under the commercial umbrella, if any. CITY and other

1 additional insureds mentioned in this paragraph shall not, by reason of
2 their inclusion as additional insureds, become liable for any payment of
3 premiums to carriers for such coverage.

4 2. For any claims related to this project, the Contractor's insurance coverage
5 shall be primary. Any insurance or self-insurance maintained by the CITY
6 or COUNTY, its officers, officials, employees, or volunteers shall be
7 excess of the Contractor's insurance and shall not contribute with it.

8 3. Coverage shall not extend to any indemnity coverage for the active
9 negligence of the additional insured in any case where an agreement to
10 indemnify the additional insured would be invalid under subdivision (b) of
11 Section 2782 of the Civil Code.

12 E. Workers' Compensation and Employer's Liability: The COUNTY and CITY shall
13 agree to waive all rights of subrogation against each other, their officers, officials,
14 employees, and volunteers for losses arising from activities and operations of
15 Contractor in the performance of services under the contract.

16 F. All Coverages: Each insurance required by this clause shall be endorsed to state
17 that coverage shall not be canceled except after thirty (30) days prior written
18 notice by certified mail, return receipt requested, has been given to the COUNTY
19 and CITY as set forth in the notice requirement of this Agreement.

20 G. Acceptability of Insurers: Insurance is to be placed with insurers with a current
21 A.M. Best's rating of no less than A:6 unless otherwise approved by the CITY's
22 Risk Manager.

23 H. Verification of Coverage: Contractor shall furnish the COUNTY with original
24 certificates and additional insured endorsement effecting coverage required by
25 this section and COUNTY shall provide same to CITY upon request. The
26 certificates and endorsements for each policy are to be signed by a person
27 authorized by the insurer to bind coverage on its behalf. The certificates and

endorsements should be on forms acceptable to COUNTY. All certificates and endorsements are to be received and approved by the COUNTY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

- I. Subcontractors: Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

EXHIBIT C – CALCULATION OF CITY'S ANNUAL FINANCIAL OBLIGATION

A	B	C	D	E	F	
Base	CPI*	New	Overhead **	Catch-up	Total Annual	Fiscal
(Prior Year C+E)	(A X CPI)	Base Cost	(C X Div Overhead)	Payment	Payment	Year
					(C+D+E)	
\$ 1,576,564	-		\$ 149,774	9.5%	\$ 1,726,338	2008-09
1,576,564	\$ 78,828	\$ 1,655,392	314,525	19.0%	\$ 1,991,089	2009-10
1,755,392	87,770	1,843,162	350,201	19.0%	100,000	2010-11
1,943,162	97,158	2,040,320	387,661	19.0%	100,000	2011-12
2,140,320	107,016	2,247,336	426,994	19.0%	100,000	2012-13
2,347,336	117,367	2,464,703	468,294	19.0%	100,000	2013-14
2,564,703	128,235	2,692,938	511,658	19.0%	100,000	2014-15
2,792,938	139,647	2,932,585	557,191	19.0%	100,000	2015-16
3,032,585	151,629	3,184,214	605,001	19.0%		2016-17
3,184,214	159,211	3,343,425	635,251	19.0%		2017-18
					3,978,676	

* Assumes 5% CPI increase for illustrative purposes only. The annual payment will reflect the actual CPI for the "Urban Wage Earners and Clerical Workers, Los Angeles-Riverside-Orange County" area for the preceding year, i.e., for Fiscal Year 2009-10 payment calculation, the CPI published in January 2009 for the calendar year ending December 2008 will be used.

** Overhead rates for 2008-09 and 2009-10 fiscal years were negotiated between the CITY and COUNTY. Assumes 19% overhead rate for illustrative purposes only for 2010-11 fiscal year and thereafter. Actual Division overhead rate will be applied starting in 2010-11.

EXHIBIT D – ANNUAL STAFFING COSTS OF SANTA MONICA BEACH

(FOR INFORMATIONAL PURPOSES ONLY)

LOS ANGELES COUNTY FIRE DEPARTMENT LIFEGUARD SERVICES

* CITY OF SANTA MONICA *

	<u>Staffing (a)</u>	<u>Total Salaries (b)</u>	<u>Total Emp Benefits (c)</u>	<u>Annual Rate</u>
FISCAL YEAR 2007-08				
<i>Beach Lifeguard Operations</i>				
Ocean Lifeguard	12.71	\$ 820,348	\$ 114,053	\$ 934,400
Ocean Lifeguard Specialist	3.50	270,985	154,020	\$ 425,005
Captain, Lifeguard Services	3.50	358,095	203,530	\$ 561,625
		<u>1,449,427</u>	<u>471,603</u>	<u>\$ 1,921,030</u>
<i>Rescue Boat Operations</i>				
Ocean Lifeguard	0.11	\$ 7,097	\$ 987	\$ 8,084
Ocean Lifeguard Specialist	1.75	135,492	77,010	\$ 212,502
Rescue Boat Captain	1.75	179,047	101,765	\$ 280,812
		<u>321,637</u>	<u>179,762</u>	<u>\$ 501,399</u>
<i>Headquarters (d)</i>				
Ocean Lifeguard	0.08	\$ 5,390	\$ 749	\$ 6,139
Ocean Lifeguard Specialist	2.54	196,952	111,942	\$ 308,894
Captain, Lifeguard Services	1.27	130,132	73,963	\$ 204,095
		<u>332,474</u>	<u>186,654</u>	<u>\$ 519,128</u>
<i>Training (e)</i>				
Ocean Lifeguard	1.20	\$ 77,746	\$ 10,809	\$ 88,555
Ocean Lifeguard Specialist	1.39	107,608	61,161	\$ 168,769
Captain, Lifeguard Services	0.52	53,606	30,468	\$ 84,074
Rescue Boat Captain	0.20	20,923	11,892	\$ 32,815
		<u>259,883</u>	<u>114,330</u>	<u>\$ 374,213</u>
			Subtotal	<u>\$ 3,315,770</u>
<i>Overhead (f)</i>				
Department	37.34%			\$ 882,501
Bureau	0.96%			\$ 22,689
Division	32.74%			\$ 773,784
			Subtotal	<u>\$ 1,678,974</u>
ANNUAL FEE - FISCAL YEAR 2007-08				<u>\$ 4,994,744</u>

(a) Staffing based on scheduled employees and budgeted hours.

(b) Salaries including LMU (11%) and Flows for life (13%). Source: FY2007-08 Master Labor Unit.

(c) Source: 2007-08 Auditor-Controller approved ORA Package.

(d) 36.34% of HQ staffing apportioned to SM.

(e) Training hours taken from Unit Cost Model.

(f) Overhead percentages applied to salaries only. Source: 2007-08 Auditor-Controller approved ORA Package.

1/12/2007

Exhibit E - Indirect Expense Rates
Overhead Rates - Breakdown
FY 2008-09

Department Overhead

Indirect Department S&W		45,971,088
Add: Employee Benefits	44.82%	20,605,963
Total Dept. Indirect S&W & EB		66,577,051
Add: Additional Employee Benefits		602,216
Overtime for Non-Field Admin.		6,701,095
Department S&S Expenditure		98,048,243
Countywide Cost		12,903,016
Total Department Overhead Cost		184,831,621
Total Labor Cost		392,287,387
Less: Indirect S&W		(45,971,088)
		346,316,299
Overtime - Department	155,436,000	
Less: OT for Non-Field Admin.	(6,701,095)	
		148,734,905
Adjusted Department Labor Base		495,051,204
Total Overhead Cost		184,831,621
Divided by Adjusted Dept. Labor Base		495,051,204
Department Overhead Rate		37.34%

Bureau Overhead (ex. Operation Bureau)

Indirect Bureau S&W		2,106,204
Add: Employee Benefits	44.82%	944,080
Total Bureau Indirect S&W & EB		3,050,284
Add: Departmental Overhead	37.34%	786,369
Additional Employee Benefits		126,410
Overtime Bureau Admin		398,995
Total Bureau Overhead Cost		4,362,058
Bureau Labor Cost		314,583,637
Less: Bureau Indirect S&W		(2,106,204)
Add: Overtime Bureau	143,484,390	
Less: OT Bureau Admin.	(398,995)	
		143,085,395
Adjusted Bureau Labor Base		455,562,828
Total Bureau Overhead Cost		4,362,058
Divided by Adjusted Bureau Labor Base		455,562,828
Bureau Overhead Rate		0.96%

Division Overhead (ex. Lifeguard Division)

Indirect Division S&W		2,255,022
Add: Employee Benefits	44.82%	1,010,785
Total Division Indirect S&W & EB		3,265,807
Add: Departmental Overhead	37.34%	841,932
Bureau Overhead	0.96%	21,592
Additional Employee Benefits		190,897
Overtime Division Admin.		75,210
Total Division Overhead Cost		4,395,438
Division Labor Cost		22,946,094
Less: Division Indirect S&W		(2,255,022)
Overtime Division	2,007,195	
Less: OT Division Admin	(75,210)	
		1,931,985
Adjusted Division Labor Base		22,623,057
Total Division Overhead Cost		4,395,438
Divided by Adjusted Division Labor Base		22,623,057
Division Overhead Rate		19.43%